IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.42673 of 2016
and W.M.P.Nos.36598 & 36599 of 2016

Adhar Digital Vision Pvt. Limited,
Rep. By its Managing Director,
Mr.P.Baskar ... Petitioner

vs.

1.The State of Tamil Nadu,
By its Secretary, Commercial Tax Department,
Fort St. George, Chennai - 9.

2.The Commercial Tax Officer,
Roving Squad, V,
Enforcement (North), Chennai - 6. ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records of the 2nd respondent in G.D.Nos.2084, 2085 & 2086/2016-2017 dated 29.11.2016 and to quash the same.

For Petitioner : Mr.J.Srinivasa Mohan

For Respondents : Mr.K.Venkatesh,
Government Advocate

O R D E R

1. Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondents. With the consent of the parties, the writ petition is taken up for final disposal.

2. I may note that, Mr.Venkatesh at the very outset, has taken a preliminary objection to the maintainability of the writ petition. The objection taken, is that, the impugned order can be assailed before the Joint Commissioner, who is the designated Revisional Authority under the Tamil Nadu Value Added Tax Act, 2006 (in short "the 2006 Act").

3. The petitioner claims to be a Multi-System Operator. It is averred that for the purposes of its business, it had imported a consignment of Set Top Boxes (in short "STBs"), for ultimate

use of its subscribers. It is stated that the STBs were supplied to consumers via the concerned cable operator.

3.1. According to the respondents, this transaction constitutes a sale. The petitioner disputes this assertion.

3.2. It is the petitioner's submission that the STBs are supplied to the ultimate subscriber via the cable operator, only for use against a security deposit. It is the petitioner's case that upon return of STBs, the security deposit is refunded to the subscriber via the concerned cable operator.

3.3. The petitioner also avers that the second respondent while passing the impugned order dated 26.11.2016, did not give the petitioner adequate opportunity to represent its case.

4. Notwithstanding the aforesaid, counsel for the petitioner says that, he will take his chance with the Revisional Authority and, accordingly, assail the impugned order after filing the relevant document to buttress its position that there is no element of sale involved in the supply of STBs to the ultimate subscriber.

5. Resultantly, the writ petition is disposed of with the liberty to the petitioner to approach the Revisional Authority. Upon the Revisional Authority, being approached, it will pass an appropriate order, albeit in accordance with law, as expeditiously as possible, though, not later than one (1) week from the date of receipt of a Revision Petition.

6. It is made clear that, in case, the Revisional Authority is pressed for time and is not able to decide the Revision Petition, finally, within the time frame given above, it shall, based on the request of the petitioner, consider release of the detained goods on such terms, as it may deem fit and reasonable.

7. Consequently, the writ petition and the pending applications are closed in terms of the directions issued above. There shall, however be, no order as to costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

vsm

To

1.The Secretary,
State of Tamil Nadu,
Commercial Tax Department,
Fort St. George, Chennai - 9.

2.The Commercial Tax Officer,
Roving Squad, V,
Enforcement (North), Chennai - 6.

1 cc to Spl. Government Pleader, Sr. 72051
1 cc to Mr.J. Sinivasamohan, Advocate, Sr. 71965

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